

CERTIFIED TRUE COPY

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

FILED

MAR 26 1998

BOARD OF PHARMACY

By: Marianne W. Greenwald
Deputy Attorney General
Division of Law - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Tel. (973) 648-4738

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PHARMACY

IN THE MATTER OF:	:	Administrative Action
	:	
EDWARD SCHWARTZ, R.P.	:	
	:	PROVISIONAL ORDER OF
LICENSED TO PRACTICE PHARMACY	:	DISCIPLINE
IN THE STATE OF NEW JERSEY	:	
	:	
<u>RI 10919</u>	:	

This matter was opened to the Board on information received which the Board has reviewed and on which the following preliminary findings are made:

FINDINGS OF FACT

1. Respondent has been an applicant or a licensee of the Board at all times relevant hereto.

2. On December 22, 1997, respondent pled guilty to a four count information in the District of New Jersey, U.S. District Court. In Count One, the defendant is charged with engaging in a conspiracy to steal government property, contrary to 18 U.S.C. § 641, in violation of 18 U.S.C. § 371. In Count Two, the defendant is charged with engaging in wire fraud, in violation of 18 U.S.C. §§ 1343 and 2. In Count Three, the defendant is charged with

engaging in misbranding of drugs, in violation of 21 U.S.C. § 331 and 18 U.S.C. § 2. In Count Four, the defendant is charged with tax evasion for the year 1994, in violation of 26 U.S.C. § 7201. The four count Information and the Plea agreement are attached hereto and made a part of the within Provisional Order.

CONCLUSIONS OF LAW

Respondent's action as set forth herein establishes that respondent has been convicted of crimes involving moral turpitude and crimes that reflect adversely on the practice of pharmacy and provides grounds for discipline pursuant to N.J.S.A. 45:1-21(f).

IT IS THEREFORE, ON THIS *25th* DAY OF *March* 1998,
ORDERED THAT:

1. The license of Edward Schwartz, R.P. to practice pharmacy in the State of New Jersey is hereby revoked.

2. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a) submitting a written request for modification or dismissal to H. Lee Gladstein, Executive Director, State Board of Pharmacy, 124 Halsey Street, 6th Floor, Newark, New Jersey 07102.

b) setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.

c) submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

3. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegations in such proceeding.

NEW JERSEY STATE BOARD OF PHARMACY

By: Michele P. Gerbino, R.P.
Michele Gerbino, R.P., President

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

: Criminal No.

97-705(AET)

v.

:

18 U.S.C. §§ 371, 641, 1343, &

EDWARD SCHWARTZ

:

21 U.S.C. § 331

26 U.S.C. § 7201

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy to commit theft)

1. At all times relevant to this Information:

a. defendant EDWARD SCHWARTZ, a registered pharmacist, was a co-owner and president of Industrial Prescription Service, a pharmacy located at 60 Sip Avenue, Jersey City, New Jersey.

b. Paul Hoffspiegel was a co-owner and vice-president of Industrial Prescription Service.

2. At all times relevant to this Information, the Department of Veterans Affairs was an agency of the United States that operated hospitals in East Orange, New Jersey, Loma Linda, California and elsewhere.

3. Between in or about January, 1992, and in or about May, 1995, in Hudson County, in the District of New Jersey, defendant

EDWARD SCHWARTZ

did knowingly and willfully conspire and agree with others to embezzle, steal, purloin, and convert to his own use things of value of the United States having a value of approximately \$283,805, contrary to Title 18, United States Code, Section 641.

4. It was a goal of the conspiracy to obtain pharmaceuticals stolen from Department of Veterans Affairs hospitals, paying one-half the retail price, and to sell the stolen pharmaceuticals through Industrial Prescription Service at full price.

OVERT ACTS

In furtherance of the conspiracy and to effect its objects, the following overt acts were committed in the District of New Jersey and elsewhere:

1. In or about May, 1995, defendant EDWARD SCHWARTZ purchased pharmaceuticals stolen by a co-conspirator from the Department of Veterans Affairs Medical Center at Loma Linda, California, and which were shipped via United Parcel Service to Industrial Prescription Service.

2. In or about February, 1995, Paul Hoffspiegel purchased 48 bottles of Vasotec, a pharmaceutical drug used to treat chronic heart failure and hypertension, for \$1728.00, from an individual who represented that the drugs were stolen.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Wire Fraud)

1. Paragraph 1 of Count 1 is realleged and incorporated herein.

2. At times relevant to this Information, Medicaid was a state and federal medical assistance program that paid medical bills on behalf of eligible, needy persons directly to the providers of medical and other health care services, including pharmacies. The federal and state governments equally funded the Medicaid program.

3. At all times relevant to this Information, the UNISYS Corporation handled all reimbursement claims related to the New Jersey Medicaid program.

4. At all times relevant to this Information, Industrial Prescription Service operated under a New Jersey Medicaid Provider Electronic Billing agreement pursuant to which Industrial Prescription Service submitted requests for Medicaid reimbursement directly to UNISYS via electronic billing media, such as computer transmissions over telephone wires.

5. On or about January 12, 1994, in Hudson County, in the District of New Jersey, and elsewhere, defendant

EDWARD SCHWARTZ

did knowingly and willfully devise a scheme and artifice to defraud the New Jersey Medicaid program and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, which included submitting for reimbursement to the Medicaid program bills for pharmaceuticals that Industrial Prescription Service never dispensed.

6. It was part of the scheme and artifice to defraud that Industrial Prescription Service became a Medicaid provider.

7. It was further part of the scheme and artifice to defraud that defendant EDWARD SCHWARTZ reviewed computerized "patient profiles" to identify prescriptions that certain customers had previously filled at Industrial Prescription Service.

8. It was further part of the scheme and artifice to defraud that defendant EDWARD SCHWARTZ billed Medicaid, through the UNISYS Corporation, for purported refills of the prescriptions referred to in paragraph 7 of this Count, although no customer requested a refill and no pharmaceuticals were dispensed.

9. It was further part of the scheme and artifice to defraud that defendant EDWARD SCHWARTZ directed employees to sign customers' names to a register, falsely indicating that the customer received a prescription.

10. It was further part of the scheme and artifice to defraud that defendant EDWARD SCHWARTZ and Industrial Prescription Service received payment from the Medicaid program, intended as reimbursement, for services not rendered and pharmaceuticals not dispensed.

11. On or about January 12, 1994, for the purpose of executing the scheme and artifice to defraud and attempting to do so, defendant

EDWARD SCHWARTZ

did knowingly and willfully transmit and cause to be transmitted

by means of wire communication in interstate commerce writings, signals, and sounds including a bill for reimbursement relating to a prescription purportedly filled for M.G.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT THREE
(Misbranding)

1. Paragraphs 1 and 2 of Count One are realleged and incorporated herein.

2. At all times relevant to this Information, pharmacies were required by federal law and the regulations of the New Jersey State Board of Pharmacy to dispense prescription pharmaceuticals directly from the original manufacturers' packaging.

3. Between in or about January, 1995, and in or about January, 1996, in Hudson County, in the District of New Jersey, and elsewhere, the defendant

EDWARD SCHWARTZ

did knowingly and willfully introduce and deliver in interstate commerce drugs that were adulterated and misbranded, in that he dispensed prescription pharmaceuticals, some of which had been stolen from Department of Veterans' Affairs hospitals, some of which were samples, and all of which had been removed from the original manufacturers' packaging.

In violation of Title 21, United States Code, Section 331 and Title 18, United States Code, Section 2.

COUNT FOUR
(Tax evasion)

1. Paragraph 1 of Count One is realleged and incorporated herein.

2. On or about March 31, 1995, defendant EDWARD SCHWARTZ signed and caused to be filed with the Internal Revenue Service a 1994 U.S. Individual Income Tax Return, Form 1040. That return stated that his taxable income for the calendar year 1994 was \$31,800 and the amount of tax due and owing was \$4,774.

3. The return did not include about \$237,683 in additional taxable income received by defendant EDWARD SCHWARTZ from sales at Industrial Prescription Service. Upon this income, an additional tax of about \$78,246 was due and owing to the United States.

4. On or about March 31, 1995, in the District of New Jersey and elsewhere, the defendant

EDWARD SCHWARTZ

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing to the United States in that he signed and caused to be filed a false and fraudulent 1994 U.S. Individual Income Tax Return, Form 1040, described in paragraph 2 of this Count, knowing it to be false and fraudulent as described in paragraph 3 of this Count.

In violation of Title 26, United States Code, Section 7201.

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By Mons J. Mondre
Deputy Clerk

Faith S. Hochberg
FAITH S. HOCHBERG
United States Attorney



U.S. Department of Justice

United States Attorney
District of New Jersey

30

970 Broad Street, Room 502

201/645-2700

Newark, New Jersey 07102

January 29, 1997

Joseph Afflitto, Sr., Esq.
500 Valley Road
P.O. Box 3097
Wayne, New Jersey 07474

A. 97-705 (AET)

Re: Plea Agreement with Edward Schwartz

Dear Mr. Afflitto:

This letter sets forth the full and complete agreement between Edward Schwartz and the United States Attorney for the District of New Jersey.

Charge

Conditioned on the understandings specified below¹, the United States will accept a guilty plea from Edward Schwartz to a four-count Information. In Count One, the defendant is charged with engaging in a conspiracy to steal government property, contrary to 18 U.S.C. § 641, in violation of 18 U.S.C. § 371. In Count Two, the defendant is charged with engaging in wire fraud, in violation of 18 U.S.C. §§ 1343 and 2. In Count Three, the defendant is charged with engaging in misbranding of drugs, in violation of 21 U.S.C. § 331 and 18 U.S.C. § 2. In Count Four, the defendant is charged with tax evasion for the year 1994, in violation of 26 U.S.C. § 7201. If Edward Schwartz enters a guilty plea and is sentenced on these charges, the United States Attorney for the District of New Jersey will not bring any further charges against Edward Schwartz relating to the transactions referred to in the Information.

Sentence and Other Penalties

The sentence to be imposed upon Edward Schwartz is within the sole discretion of the sentencing judge, subject to

¹This proposed plea agreement is subject to the approval of the Department of Justice, Tax Division.

the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and the United States Sentencing Guidelines. The sentencing judge may impose the maximum term of imprisonment and the maximum fine that are consistent with the Sentencing Reform Act and the Sentencing Guidelines, up to and including the statutory maximum term of imprisonment and the statutory maximum fine.

The violation of 18 U.S.C. § 371 charged in Count One of the Information carries a statutory maximum penalty of 5 years imprisonment and a \$250,000 fine.

The violation of 18 U.S.C. § 1343 charged in Count Two of the Information carries a statutory maximum penalty of 5 years' imprisonment and a fine of \$250,000.

The violation of 21 U.S.C. § 331 charged in Count Three of the Information carries a statutory maximum penalty of 1 year's imprisonment and a fine of \$1000.

The violation of 26 U.S.C. § 7201 charged in Count Four carries a statutory maximum penalty of 5 years' imprisonment and a \$100,000 fine, together with the costs of prosecution.

With respect to Counts One, Two, and Four, and pursuant to 18 U.S.C. § 3571, the sentencing judge may impose an alternate fine of up to \$250,000 or twice the gross profits to Edward Schwartz or gross loss to any victims of his offenses. With respect to Count Four, the sentencing judge may impose an alternate fine of up to \$100,000 or twice the gross profits to Edward Schwartz or gross loss to any victims of his offense. The Sentencing Reform Act and the Sentencing Guidelines also may impose a minimum term of imprisonment and/or fine, and the Sentencing Guidelines may authorize departure from the minimum and maximum penalties under certain circumstances. All fines imposed by the sentencing court in excess of \$2500 are subject to the payment of interest.

Further, in addition to imposing any other penalty on Edward Schwartz for Counts One, Two, and Four, the sentencing judge: (1) will order Edward Schwartz to pay an assessment of \$50 per count, which is to be paid on or before the date of sentencing, pursuant to 18 U.S.C. § 3013; (2) may order Edward Schwartz to pay restitution pursuant to 18 U.S.C. §§ 3663 and 3664; (3) may order Edward Schwartz, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; and, (4) pursuant to 18 U.S.C. § 3583 and § 5D1.2 of the Sentencing Guidelines, may require Edward Schwartz to serve a term of supervised release of at least two but not more than three years per count, which will begin at the expiration of any term of imprisonment imposed. Should Edward Schwartz be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Edward Schwartz may be sentenced to not more than two

years' imprisonment per count in addition to any prison term previously imposed and in addition to the statutory maximum term of imprisonment set forth above.

In addition to imposing any other penalty on Edward Schwartz for Count Three, the sentencing judge will: (1) order Edward Schwartz to pay an assessment of \$25, which is to be paid on or before the date of sentencing, pursuant to 18 U.S.C. § 3013; (2) may order Edward Schwartz to pay restitution pursuant to 18 U.S.C. §§ 3663 and 3664; (3) may order Edward Schwartz, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; and, (4) pursuant to 18 U.S.C. § 3583 and § 5D1.2 of the Sentencing Guidelines, may require Edward Schwartz to serve a term of supervised release of one year, which will begin at the expiration of any term of imprisonment imposed. Should Edward Schwartz be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Edward Schwartz may be sentenced to not more than one year's imprisonment in addition to any prison term previously imposed and in addition to the statutory maximum term of imprisonment set forth above.

It is further agreed, as part of this plea agreement, that Edward Schwartz shall, prior to sentencing: (1) file all delinquent personal income tax returns and amend any inaccurate returns; (2) provide all appropriate documentation in support of such returns, upon request; (3) pay to the Internal Revenue Service the taxes, interest and penalties owed on those returns in the amount set and on a schedule agreed to by the defendant, the Internal Revenue Service, and the U.S. Probation Office; and (4) fully cooperate with the Internal Revenue Service and comply with the tax laws of the United States. Further, Edward Schwartz agrees to allow the contents of his criminal file to be given to civil attorneys and support staff of the Internal Revenue Service to enable them to investigate any and all civil penalties that may be due and owing by Edward Schwartz. With respect to disclosure of the criminal file to the Internal Revenue Service, Edward Schwartz waives any rights he may have pursuant to Title 26, United States Code, Section 7213 and Fed. R. Crim. P. 6(e), and any other right of privacy with respect to his tax returns and return information. Furthermore, Edward Schwartz waives any rights that he may have pursuant to Fed. R. Crim. P. 6(e) as to any and all documents and information obtained during this investigation. If the defendant complies with these provisions, he will not be prosecuted criminally for any violations of Title 26 which may have occurred during calendar years 1989, 1990, 1991, 1992, and 1993.

Stipulations

The United States and Edward Schwartz agree to stipulate at sentencing to the statements set forth in the

attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing court, which may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent the parties do not stipulate, each reserves the right to argue the impact of any fact upon the sentence. Moreover, this agreement to stipulate on the part of the United States is based on the Information and evidence that this Office possesses as of the date of this plea agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, the United States shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either the United States or Edward Schwartz from any other portion of this plea agreement, including any other stipulation. The absence of a stipulation is not to be construed as any indication regarding the applicability of certain offense characteristics or consideration of certain conduct.

Rights of U.S. Attorney's Office at Sentencing

This Office cannot and does not make any representation or promise as to what guideline range will be found applicable to Edward Schwartz, or as to what sentence Edward Schwartz ultimately will receive. This Office, however, reserves its right to take a position with respect to the appropriate sentence to be imposed on Edward Schwartz by the sentencing judge. In addition, the Office of the United States Attorney for the District of New Jersey will inform the sentencing judge and the Probation Office of: (1) this agreement; (2) the nature and extent of Edward Schwartz's activities and relevant conduct with respect to this case; and (3) all other information relevant to sentencing, favorable or otherwise, in the possession of this Office.

The United States specifically reserves the right to correct factual misstatements relating to sentencing proceedings; to appeal Edward Schwartz's sentence pursuant to 18 U.S.C. § 3742(b); and to oppose any appeal of his sentence by Edward Schwartz pursuant to 18 U.S.C. § 3742(a).

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local prosecuting authorities. However, the United States Attorney's Office for the District of New Jersey will bring this agreement to the attention of other prosecuting offices, if requested to do so.

Finally, this agreement was reached without regard to any civil matters that may be pending against Edward Schwartz, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

This agreement constitutes the full and complete agreement between Edward Schwartz and the United States Attorney for the District of New Jersey. No additional promises, agreements, or conditions have been entered into other than those set forth in this letter, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

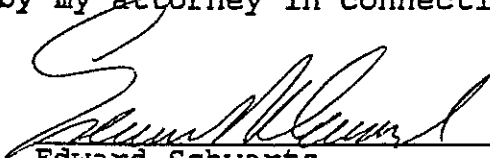
FAITH S. HOCHBERG
United States Attorney

Carolyn A. Murray
By: Carolyn A. Murray
Assistant U.S. Attorney

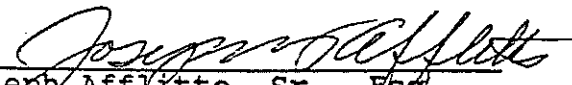
APPROVED:

Edward Schwartz
DEPUTY CHIEF, CRIMINAL DIVISION

I have received this letter from my attorney, Joseph Afflitto, Sr., Esq., and have read it, and I understand it fully. I hereby acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the District of New Jersey. I state that there have been no additional promises or representations made to me by any officials or employees of the United States Government or by my attorney in connection with this matter.


Edward Schwartz

Witnessed by:


Joseph Afflitto, Sr., Esq.
Counsel for Edward Schwartz

Date: Dec 22, 1997

PLEA AGREEMENT WITH EDWARD SCHWARTZ

Schedule A

The United States and Edward Schwartz agree to stipulate at sentencing to the statements set forth below, subject to the conditions in the attached plea agreement.

1. The applicable guideline for the offense charged in Count One of the Information is § 2B1.1, which carries a base offense level of 4.

2. The loss that occurred as a result of the theft was more than \$200,000 and less than \$350,000. Therefore, a 10 level enhancement is appropriate. U.S.S.G. § 2B1.1 (b)(1).

3. The offense charged in Count One of the Information involved more than minimal planning. Therefore, a 2 level enhancement is appropriate. U.S.S.G. § 2B1.1 (b)(5)(A).

4. The applicable guideline for the offense charged in Count Two of the Information is § 2F1.1, which carries a base offense level of 6.

5. The loss that occurred as a result of the defendant's fraud was more than \$20,000 and less than \$40,000. Therefore, a 4 level enhancement is appropriate. U.S.S.G. § 2F1.1 (b)(1).

6. The offense charged in Count Two of the Information involved more than minimal planning. Therefore, a 2 level enhancement is appropriate. U.S.S.G. § 2F1.1 (b)(2)(A).

7. The applicable guideline for the offense charged in Count Three of the Information is § 2N2.1, which carries a base offense level of 6.

8. The applicable guideline for the offense charged in Count Four of the Information is U.S.S.G. § 2T1.1.

9. Pursuant to the provisions governing relevant conduct, ~~the defendant's share of the "tax loss," as defined~~ *Enly 12/22/97*
under the guidelines, is more than \$70,000 and less than *Cam 12/22/97*
\$120,000. ~~Therefore, the base offense level is 14.~~ *pta* See U.S.S.G. *Cam*
§§ 1B1.3; 2T4.1(I). *12/22/97*

10. Each count constitutes a separate group. Counts One, Two and Four each are one unit. Count Three does not receive a unit. Since three units are assessed, the offense level of the group with the highest offense level is increased by three levels, resulting in a combined offense level of 19. See U.S.S.G. § 3D1.2, 3 & 4.

11. As of the date of this agreement, Edward Schwartz clearly has demonstrated a recognition and affirmative acceptance of responsibility for the offenses charged. Furthermore, he has timely notified authorities of his intention to enter a plea of guilty. If his acceptance of responsibility continues to the date of sentence, and if the combined offense level is 16 or more, then a downward adjustment of three points for acceptance of responsibility is appropriate. See U.S.S.G. § 3E1.1(a) & (b)(2).

I HEREBY CERTIFY that the above and
foregoing is a true and correct copy
of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By: Mark J. Morelli
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
MINUTES OF PROCEEDINGS

38

TRENTON
OFFICE

December 22, 1997
DATE OF PROCEEDINGS

JUDGE ANNE E. THOMPSON
COURT REPORTER VINCENT RUSSONIELLO
DEPUTY CLERK NANCY E. LYTWYN

TITLE OF CASE:
UNITED STATES OF AMERICA
VS.

EDWARD SCHWARTZ

APPEARANCES:

UNITED STATES ATTORNEY
BY: Carolyn Murray, AUSA

Joseph Afflitto, Esq. for defendant

FILED
DEC 22 1997
AT 8:30
WILLIAM T. WALSH, CLERK
CRIMINAL NO. 97-705

NATURE OF PROCEEDING: Plea to Information

Ordered defendant sworn.

Defendant waives Indictment.

Plea: Guilty to count(s) 1-4 off the Information
Terms of the Plea Agreement read into the record.

Ordered sentence date: March 11, 1998 at 9:15 AM
Ordered bail continued pending sentencing.

Application by deft to allow travel over holidays.
Ordered - granted; Order signed and filed.

I HEREBY CERTIFY that the above and
foregoing is a true and correct copy
of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By: Theresa J. Moulton
Deputy Clerk

COMMENCE: 11:30
ADJOURNED: 12:00 Noon

Nancy E. Lytwyn
Deputy Clerk